

(2013) 09 KAR CK 0327
In the Karnataka High Court
Case No : Writ Petition No. 15972 of 2013 (BDA)

Sri H. Nagaraj

APPELLANT

Vs

Bangalore Development Authority

RESPONDENT

Date of Decision : 12-09-2013

Acts Referred:

Citation : (2013) 09 KAR CK 0327

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : Anusha Asundi, for Sri A. Madhusudhana Rao, for the Appellant;
M.N. Ramanjaneya Gowda, for the Respondent

Final Decision : Disposed Off

Judgement

A.S. Bopanna, J.—The petitioner is before this Court seeking that the endorsement dated 30.11.2012 impugned at Annexure-J be quashed and a mandamus be issued to the respondent to execute and register an absolute sale deed in respect of site bearing No. 1880, Sir M. Visweshwarayanagar, 7th Block Further Extension, Bangalore. The petitioner had made application for allotment of site to the respondent in the year 1982, 2002 and 2003 respectively. According to the petitioner though he was entitled to the preferential allotment as he was an employee of the Karnataka Power Transmission Corporation and such right was available for grant of site, the respondent had not allotted the site in the year 2003. Presently, the details on that aspect of the matter need not be adverted to since it is not in dispute that the petitioner had approached this Court in W.P. No. 8835/2008 and this Court while disposing of the same on 12.11.2008 had directed allotment of site in favour of the petitioner. The request of the petitioner however is for execution of an absolute sale deed in his favour.

2. The respondent-BDA in response to the request of the petitioner have issued the endorsement dated 30.11.2012 wherein they have contended that since the Site Allotment Rules have been amended with effect from 27.04.2005 whereby the execution of the absolute sale deed has been modified, the petitioner would

not be entitled to the same. The objection statement filed in the instant petition is also to the same effect to justify that the rejection made is as per the Rules and therefore to contend that the same does not call for interference.

3. In the case on hand, the petitioner would also rely on similar circumstances where even subsequent to the year 2005, the absolute sale deeds have been executed. In my opinion, the same would not be relevant for considering the issue since in the instant facts, what requires to be noticed is as to whether the petitioner has made out a right to seek for quashing the endorsement whereby the request to execute the sale deed is declined by the respondent. In order to consider this aspect of the matter the right of the petitioner for allotment of the site which has been considered by this Court in W.P. No. 8835/2008 would be relevant. In that regard, the case of the petitioner while assailing the action of the respondents in not granting the site was that while the petitioner made the application on 29.09.2003, he had become entitled to allotment both keeping in view the age criteria and the preferential criteria for the persons working in the Government and Semi-Government undertakings. This contention of the petitioner in fact had been accepted by this Court and ultimately a direction was issued in the said W.P. No. 8835/2008 on 12.11.2008. If this aspect is kept in view what would be clear is that the petitioner was entitled for allotment in the year 2003 but the same had got postponed until this Court decided the right of the petitioner when a direction was issued in the year 2008. In such circumstance, in a normal circumstance, if the respondents had appropriately considered the application of the petitioner and had allotted the site in the year 2003, the relaxation in the Rule which had been made and was in existence till 23.04.2005 when it was amended would have been available to the petitioner to seek for execution of an absolute sale deed in favour of the petitioner. In such circumstance, when the right has been denied to the petitioner for the acts of the respondents, the respondents in the instant facts cannot now rely upon the amended Rules to deny the benefit to the petitioner.

4. Therefore, keeping these aspects in view, I am of the opinion that the reason put forth in the endorsement dated 30.11.2012 would not be justified in the instant facts of the case. Accordingly the endorsement is quashed. A direction is issued to the respondents to execute the absolute sale deed in respect of the site allotted in favour of the petitioner and enable registration of the same. To carryout such direction in a time bound manner the petitioner shall now file a representation along with the certified copy of this order with the respondents within two weeks from the date of receipt of a copy of this order. The respondents shall thereafter take steps for execution of the sale deed within four weeks from the date on which the petitioner complies with the other requirements with regard to production of stamp papers etc.

In terms of the above, the petition stands disposed of.